

****E-filed 12/12/11****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANTONIO V. NAGUIAT, JR., et al.,

No. C 10-4303 RS

Plaintiffs,

ORDER DENYING MOTION

v.

BAC HOME LOANS SERVICING, LP, et
al.,

Defendants.

On October 14, 2011, an order entered granting defendants' motion to dismiss the complaint without leave to amend, and directing the Clerk to close the file. Plaintiffs now move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time in which to file a notice of appeal, which they assert has expired. Plaintiffs contend that they reasonably understood the order to have dismissed their claims only as to the single defendant listed in the caption, despite the facts that (1) the motion to dismiss was brought by all defendants; (2) the text of the order referred to "defendants" in the plural, and; (3) the file was ordered to be closed. Were it otherwise plausible that plaintiffs were misled by the omission in the caption of the phrase "et al." and its use of the singular "defendant," plaintiffs' failure to appear at the Case Management Conference that had been scheduled for October 27, 2011, or to file the requisite Case Management Conference Statement in advance thereof, demonstrates that they likely understood that the October 14th order had disposed

1 of the entire action, their current assertions notwithstanding. Accordingly, plaintiffs have failed to
2 demonstrate plausible grounds for relief under Rule 4(a)(5). Without expressing any opinion as to
3 whether or not plaintiffs' time to file an appeal in this matter has in fact expired, their motion is
4 denied.

5
6 IT IS SO ORDERED.

7
8 Dated: 12/9/11



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Antonio V. Naguiat, Jr.
Olivia B. Magno
47945 Avalon Heights Terrace
Fremont, CA 94539

DATED: 12/12/11

/s/ Chambers Staff

Chambers of Judge Richard Seeborg